

UNITED STATES DISTRICT COURT
for the
Eastern District of Pennsylvania

William B. Recarde; Dorothy A. Recarde

Plaintiffs, *Sui Juris*

Vs

SANTANDER BANK, N.A. f/k/a
SOVEREIGN BANK, N.A

DEFENDANTS

Civil Action No. **16-cv-806**

**PLAINTIFFS' RESPONSE TO
DEFENDANT'S MOTION TO
DISMISS COMPLAINT**

Date: April 6, 2016

Commonwealth of Pennsylvania)

) Subscribed and Sworn

Lancaster County)

COMES NOW Plaintiffs, William B. and Dorothy A. Recarde, *Sui Juris*, Citizens of Pennsylvania, sworn according to law, to respond to Defendant's motion to dismiss complaint.

I. FACTS

1. This complaint was filed to procure a declaratory judgment for the violation event of May 18, 2015, when the Defendant failed to obey 15 U.S.C. § 1635(a) by responding as the law specified in the TILA Rescission Instrument, executed April 24, 2015, and duly served.

2. This violation event exists in fact and law because the Defendants have submitted no wet-ink evidence of any kind of response to the Plaintiffs Notice of Cancellation during the period of April 27 and May 18, 2015. No comment, question, objection or suit in federal court was filed.

3. This violation event of federal consumer protection law warrants consideration by the

court over other matters in the background and arguments by the Defendant because § 1635 is a remedy offered consumers for injury, including victims of fraud.

4. Defendants lost their standing and defense against the effects of the rescission instrument by not responding, including any Statute of Limitations defense, therefore, their many arguments presented are moot and should be dismissed by this court.

5. Defendant's motion invoking FRCP 12(b)(1) as a factual attack is based on extrinsic evidence outside these proceedings for violation of a federal law event. It is unreasonable to conclude that the violation event is not founded on other matters, long in the making, and the Plaintiffs recognize their allegations are "mere evidence on the issue to be considered by the trial court." See *Rhodes v United States*, 950 F. Supp. 623,628 (D.Del.1996) However, what throws in the wrench is when Fraud exists in fact and on the record. Fraud being the valid reason, upon discovery of it, to terminate a contract and formalize it via § 1635.

6. Because this matter involves equitable statutes, it must follow that equitable tolling applies. When Fraud exists there is no time limit involved. A contract fails, becomes null and void, when fraud is discovered and is not proven by the Defendants to be otherwise.

7. Clarity regarding equitable tolling application is given in this excerpt from rmfpc.com:

"The three elements for demonstrating a successful claim of "equitable tolling" in a civil RICO action are well established and were set forth by the U.S. Court of Appeals in the Second Circuit in *Tho Dinh Tran v. Alphonse Hotel Corp.*

Under federal common law, a statute of limitations may be tolled due to the defendant's fraudulent concealment if the plaintiff establishes that: (1) the defendant wrongfully concealed material facts relating to defendant's wrongdoing; (2) the concealment prevented plaintiff's 'discovery of the nature of the claim within the limitations period'; and (3) the plaintiff exercised due diligence in pursuing the discovery of the claim during the period plaintiff seeks to have tolled."

Page 2

8. In the matter of subject matter jurisdiction, this court is reminded that the lower court actions remain void *ab initio* because, to date, no genuine evidence of original wet-ink documents or first-hand witnesses to support their claim exist on the record, despite volumes of hearsay paperwork submitted and accepted by the court, proceeding as if same were valid.

9. Submissions to the court “in brief or argument” by attorneys are hearsay evidence. *See Trinsey v Pagliaro*, D.C. Pa 229 F Supp. 647 (1964). No true injured person appeared.

10. Credit agencies report that Dorothy A. Recarde has no public credit record of having a mortgage since 2006. (*See Exhibit. A*) Her signature is revoked from the February 10, 2006 mortgage loan agreement document with notice duly served.

11. Defendants have failed to submit the second wet-ink Mortgage Loan Agreement that only William signed as genuine evidence of their claim, just as they failed to provide the first.


12. Noticed Revocation of Signature and formal Rescission, both executed properly according to contract law, leaves only the federal law violation event for this court to examine.

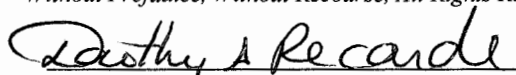
13. Defendant’s invoking FRCP 12(b)(6) “Failure to state a claim for which relief can be granted” is subject to examination by the court on the basis that a “complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *See Conley v Gibson* 355 U.S. 41,45,46,78 S.Ct. 99, 102, 2Led 2d 80 (1957); *Seymour v Union News Company* 7 Cir.217 F.2d 168 (1954); *John Edward Crockard v Publishers, Saturday Evening Post of Philadelphia*, Fr Serv 29, 19 F.R.D. 511, DCED PA 19 (1958).

14. The Rescission documents and the violation event are facts presented to this court which do entitle the Plaintiff to relief. Their claim is valid.

THEREFORE, the Plaintiffs move the court to dismiss with prejudice the Defendant's Motion to Dismiss filed March 8, 2016, and to award injunctive relief as requested in Section V of their Complaint filed February 19, 2016.

Signed this 6th day of April, 2016.


 William B. Recarde, Executor
Without Prejudice, Without Recourse, All Rights Reserved


 Dorothy A. Recarde, Executor
Without Prejudice, Without Recourse, All Rights Reserved

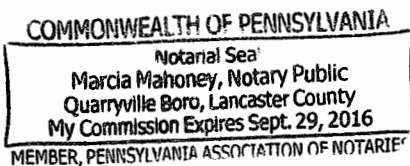
ACKNOWLEDGEMENT

Commonwealth of Pennsylvania))
) Subscribed and Sworn
 County of Lancaster)

Subscribed and sworn to me, the undersigned notary public, on the 6th day of April 2016, and proved to me on the basis of satisfactory evidence to be the persons claimed, appeared William B. Recarde and Dorothy A. Recarde, who affixed their signatures to this instrument and executed same in their authorized capacities as Executor/Trustors and Owners of said property.

I certify under penalty of perjury that the above paragraph is true and correct.

IN WITNESS WHEREOF, I hereby affix my hand and seal.



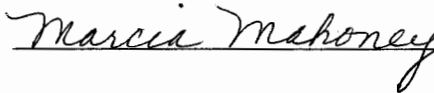
 Notary Public

Exhibit A

April 5, 2016

Latest Credit Summary

Rodney A. Recarde

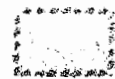
Your Credit Summary highlights the information in your credit file that is most important in determining your credit standing by distilling key credit information into one easy-to-read summary.

CREDIT REPORT as of 03/24/2016

Hide All Show All	Equifax	TransUnion	Experian
Hide	0	0	0
Total Mortgage Accounts			
Balance	\$0	\$0	\$0
Credit Limit	N/A	N/A	N/A
Debt to Credit Ratio	N/A	N/A	N/A
Hide	0	0	0
Total Installment Accounts			
Balance	\$0	\$0	\$0
High Balance	N/A	N/A	N/A
Debt to Credit Ratio	N/A	N/A	N/A
Hide	4	1	3
Total Credit Limit	\$6,638	\$3,928	\$4,638
Debt to Credit Ratio	26%	43%	37%
Hide	0	0	0
Total Other Accounts			
Balance	\$0	\$0	\$0
Hide	4	1	3
Total Open Accounts			
Total Balance	\$1,716	\$1,716	\$1,716
Total Credit Limit	\$6,638	\$3,928	\$4,638
Total Debt to Credit Ratio	26%	43%	37%

features? Upgrade to
Equifax Complete™
Family Plan today.

You may be eligible for
3 Bureau Credit Report
Scores for \$19.95 – a 5
discount from our retail
of \$39.95. Click here to
order



Your
Message
Center

Concerned about ID
Theft? Visit

IdentityProtection.com
stay up to date on id
theft news and learn
to do if you're a victim

View your Equifax Credit
Identity Theft Insurance

The Five Conditions
Make Charitable
Contributions Deductible

Quiz – How Does Your
Credit Behavior Impact
Your Credit Score

Requirement Saving
Resolutions to Make
Right Now

Four Ways to Make
Cash this Year

Tips for Getting a
Mortgage When You
Have Student Loan

UNITED STATES DISTRICT COURT
for the
Eastern District of Pennsylvania

William B. Recarde; Dorothy A. Recarde

Plaintiffs, *Sui Juris*

Vs

SANTANDER BANK, N.A. f/k/a
SOVEREIGN BANK, N.A

DEFENDANTS

Civil Action No. **16-cv-806**

PLAINTIFFS' NOTICE OF

MOTION TO DISMISS

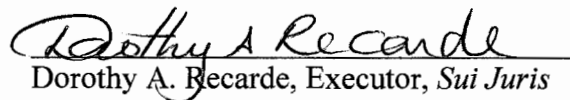
Date: April 6, 2016

Plaintiffs, William B. and Dorothy A. Recarde, move the court to dismiss with prejudice the Defendant's motion to dismiss filed March 8, 2016, for those reasons presented in their "Response to Defendant's Motion to Dismiss Complaint".

Signed this 6th day of April, 2016



William B. Recarde, Executor, *Sui Juris*



Dorothy A. Recarde, Executor, *Sui Juris*

William & Dorothy Recarde
277 W. Shady Road
Kirkwood, PA 17536
(717) 529-6063

April 6, 2016

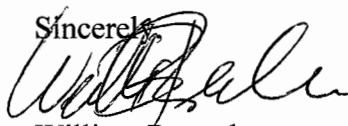
The Hon. Larence F. Stengel
USDC – Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

RE: 16-cv-806 Recarde v Santander Bank, N.A.

Dear Judge Stengel,

This package contains a courtesy copy of our filing identified as “Plaintiffs’ Response to Defendant’s Motion to Dismiss Complaint” and also a copy of Fiduciary Appointment.

Thank you for your consideration.

Sincerely,

William Recarde

Enc

Cc: Ken Massey

Executors, *Sui Juris*

Civil Action No. 16-cv-806

PLAINTIFFS' APPOINTMENT OF FIDUCIARY

April 6, 2016

DEFENDANTS

[4] It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual.

[5] Furthermore, it has been stated that **any enterprise undertaken by the public official who tends to weaken public confidence and undermine the sense of security for individual rights is against public policy.** Fraud in its elementary common law sense of deceit - and this is one of the meanings that fraud bears [483 U. S. 372] in the statute, (See *United States v. Dial*, 757 F.2d 163, 168 7th Cir (1985) - includes **the deliberate concealment of material information in a setting of fiduciary obligation.**"

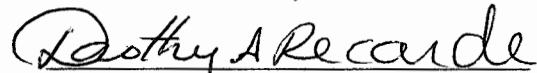
And also "A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him, and if he deliberately conceals material information from them, he is guilty of fraud." *McNally v United States* 483, U.S. 350 (1987),

Whereupon, in recognition of our lack of training in matters of law do hereby appoint as their Fiduciary in this instant matter: Larence F. Stengel, Judge

Signed this 6th day of April, 2016



William B. Recarde, Executor *Sui Juris*



Dorothy A. Recarde, Executor, *Sui Juris*

CERTIFICATE OF SERVICE

I, Dorothy A. Recarde, do solemnly declare that on April 6, 2016, I did cause to be delivered by Certified Mail a "Plaintiffs Response" package to the party and location listed below:

Dorothy A. Recarde
Dorothy A. Recarde, Executor

TO: Ken S. Massey
Parker Ibrahim & Berg, LLC
1635 Market St.
Philadelphia, PA 19103

Cert Mail No: 7015 0640 0006 2118 3215

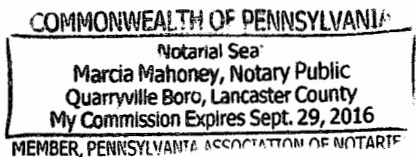
TO: Larence F. Stengel, Judge
US District Court – Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market St.
Philadelphia, PA 19106

Express Mail: EL 198953085 US

ACKNOWLEDGEMENT

Commonwealth of Pennsylvania }
County of Lancaster } SS

Subscribed and sworn to before me on this 6th day of April, 2016,
by DOROTHY A RECARDE, proved to me on the basis of satisfactory
evidence to be the person who appeared before me and to have packaged the foregoing
documents listed in the certificate of mailing above to the party listed therein.



Marcia Mahoney
Notary Public



Flat Rate Envelope
U.S. MAIL
~~X-R~~ **EXTREMELY URGENT**



PLEASE NOTE:

When used internationally affix custom declarations (PS Form 2976, or 2976A)

Please Rush To Addressee



EL198953094US

(EL198953094US)



UNITED STATES
POSTAL SERVICE®

PRIORITY
★ MAIL ★
EXPRESS™

16-806

CUSTOMER USE ONLY
FROM: (PLEASE PRINT) PHONE (717) 522-6065
William K. ...
877 W. SHADY RD
KIRKWOOD PA 17536

PAYMENT BY ACCOUNT (If applicable)

DELIVERY OPTIONS (Customer Use Only)
☒ SIGNATURE REQUIRED (Note: The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.)
Delivery Options:
☐ No Saturday Delivery (delivered next business day)
☐ Sunday/Holiday Delivery Required (additional fee, where available)
☐ 10:30 AM Delivery Required (additional fee, where available)
*Refer to USPS.com or local Post Office for availability.

TO: (PLEASE PRINT) PHONE (717) 522-7104
CLERK of the Court -
USDC Eastern PA
14613 US Court house
601 Market St.
Philadelphia PA 19103
ZIP+4® (U.S. ADDRESSES ONLY)
19106

☐ For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.
☐ \$100.00 Insurance included.

FOR FILING INTO DOCKET
PLEASE OPEN IMMEDIATELY

ORIGIN (POSTAL SERVICE USE ONLY)
☒ 1-Day ☐ 2-Day ☐ Military ☐ DPO
PO ZIP Code 17566 Scheduled Delivery Date (MM/DD/YY) 4-7-16 Postage \$22.95
Date Accepted (MM/DD/YY) 4-6-16 Scheduled Delivery Time ☐ 10:30 AM ☐ 3:00 PM Insurance Fee \$ COD Fee \$
Time Accepted 2:46 ☐ AM ☒ 12 NOON 10:30 AM Delivery Fee \$ Return Receipt Fee \$ Live Animal Transportation Fee \$
Weight 0 lbs. 5.4 ozs. ☒ Flat Rate Sunday/Holiday Premium Fee \$ Total Postage & Fees \$22.95
Acceptance Employee Initials JEB

DELIVERY (POSTAL SERVICE USE ONLY)
Delivery Attempt (MM/DD/YY) Time Employee Signature
☐ AM ☐ PM
Delivery Attempt (MM/DD/YY) Time Employee Signature
☐ AM ☐ PM

LABEL 11-B, SEPTEMBER 2015 PSN 7690-02-000-9996 3-ADDRESSEE COPY



PS10001000006